

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NATHAN BRINTON,

Plaintiff,

v.

CONCORA CREDIT INC.,

Defendant.

CASE NO. C23-6094 BHS

ORDER

THIS MATTER is before the Court on Defendant Concora Credit Inc.'s amended motion to dismiss, Dkt. 9. Concora asks the Court to dismiss with prejudice and without leave to amend pro se Plaintiff Nathan Brinton's complaint, Dkt. 5.

Brinton is a Washington resident. He alleges that Concora sent him more than 40 misleading email solicitations. He asserts claims under Washington's Consumer Protection Act (CPA), Chapter 19.86 RCW, California Business & Professional Code § 17529.5, and Florida Statute § 668.603. The gist of his claims is that the emails were intentionally disguised, misleading, and unwanted.

Concora seeks dismissal under Federal Rule of Civil Procedure 12(b)(6), arguing that Brinton has not pled and cannot plead a plausible CPA claim, because he has no

1 damages and he cannot plausibly allege that the emails caused damage. It argues that, as
2 a Washington resident, Brinton does not have standing to assert similar claims under the
3 law of California (where some of the servers that sent the emails were allegedly located)
4 or the law of Florida (where some of the servers that sent the emails were allegedly
5 located).

6 Concora's motion was properly noted for Friday, January 5, 2024. Dkt. 9. After
7 the New Year's holiday, Brinton's response to the motion was due Tuesday, January 2,
8 2024. Local Rule 6(a). Brinton has not responded. Dkt. 13.

9 Under Local Rule 7(b)(2), a party's failure to respond to a motion to dismiss can
10 be deemed by the court an admission that the motion has merit:

11 *Obligation of Opponent.* Each party opposing the motion shall, within the
12 time prescribed in LCR 7(d), file with the clerk, and serve on each party
13 that has appeared in the action, a brief in opposition to the motion, together
14 with any supporting material of the type described in subsection (1). Except
for motions for summary judgment, if a party fails to file papers in
opposition to a motion, such failure may be considered by the court as an
admission that the motion has merit.

15 Concora's motion does have merit, and Brinton's failure to respond in any fashion
16 to it is an admission of the same. For that reason, and for the reasons outlined in the
17 motion itself, the motion is **GRANTED** and all of Brinton's claims are **DISMISSED**
18 **with prejudice and without leave to amend.**

19 The Clerk shall enter a **JUDGMENT** and close the case.

20 **IT IS SO ORDERED.**

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1 Dated this 8th day of January, 2024.

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4 BENJAMIN H. SETTLE
5 United States District Judge
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